



## THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: May 20, 2004 REPORT NO. 04-104

ATTENTION: Honorable Mayor and City Council  
Docket of May 24, 2004

SUBJECT: Reinstatement of Resolution R-294947 permanently debarring Southern California Underground Contractor's Inc., George Rogers Frost, and Jim Craig Jackson, (collectively referred to as SOCAL).

REFERENCE: City Manager Report No. 01-068 (Revised).

### SUMMARY:

Issues: Should the City Council permanently debarring Southern California Underground Contractor's Inc., George Rogers Frost, and Jim Craig Jackson, (collectively referred to as SOCAL)?

Manager's Recommendation: The City Council should permanently debar Southern California Underground Contractor's Inc., George Rogers Frost, and Jim Craig Jackson, (collectively referred to as SOCAL).

Other Recommendations: None.

Fiscal Impact: None.

### BACKGROUND

On May 29, 2001, Council passed Resolution R-294947 permanently debarring Southern California Underground Contractor's Inc., George Rogers Frost, and Jim Craig Jackson, [collectively referred to as SOCAL], pursuant to San Diego Municipal Code sections 22.0801 et. seq., for "corrupt practices involving the administration or award of City contracts." (A copy of the Resolution and Findings adopted by Council are attached.) Council heard approximately an hour and a half of oral presentation over two Council meetings and had in excess of 400 pages of documents to review for the debarment hearing. The "corrupt practices" noted in the Council Findings included taking water from City fire hydrants without using operable water meters so that billing for the water could not be accomplished, two instances of falsification of traffic control permits, numerous occasions of working in the public right-of-way without traffic control plans or inappropriate traffic control, false claims for inflated labor rates and inflated equipment

rates on requests for additional compensation, misrepresentations of work completed, and three instances of false worker's compensation claims made to the City's Owner Controlled Insurance Program. Council also passed an alternative resolution that if a court overturned the permanent debarment, a three year debarment pursuant to SDMC section 22.0803(a) would go into effect.

SOCAL filed a lawsuit (SDSC No. 768749) challenging its debarment by alleging its due process rights had been violated and that Council did not have authority to permanently debar under the applicable Municipal Code provisions. On October 9, 2001, the superior court ruled that SOCAL had not been denied due process of law, however, the court also ruled that Council had exceeded its authority under the Municipal Code in permanently debarring SOCAL and ordered that the alternative three year debarment be imposed, effective May 29, 2001. Both the City and SOCAL appealed.

### DISCUSSION

On May 6, 2003, the Appellate Court ruled in the City's favor, agreeing that SOCAL's due process rights had not been violated, and reversing the Superior Court by ruling that Council did have authority under the Municipal Code to permanently debar SOCAL. The Appellate Court specified "The matter is remanded to the trial court with directions that the City Council may reinstate its resolution permanently debarring SOCAL." (A copy of the Appellate Court ruling is attached.) SOCAL petitioned the California Supreme Court for review, which was denied on August 20, 2003. On August 28, 2003, the Appellate Court certified that its opinion was final and remanded the matter to the superior court. On September 19, 2003, the Superior Court amended its previous judgment and ruled in the City's favor. The court specified "Respondent, City of San Diego, may reinstate its resolution and petitioner is permanently debarred."

For SOCAL to be permanently debarred, it is necessary for Council to reinstate Resolution R-294947. At present SOCAL is debarred under the three year debarment, which ends May 29, 2004.

### ALTERNATIVE

The City Council not permanently debar SOCAL. This is not recommended as it would allow SOCAL to continue bidding on City contracts and would contradict earlier City actions.

Respectfully submitted,

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Engineering and Capital Projects

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Assistant Deputy Director

Richard Mendes  
Deputy City Manager

BELOCK/Zoumaras

The attachments are available for review in the Office of the City Clerk.